UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,991	11/18/2003	Charles R. Hellier	P9538	4883

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EXAMINER
NGUYEN, PHILLIP H

ART UNIT	PAPER NUMBER
2194	

DATE MAILED: 08/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)
Office Action Summary		10/715,991	HELLIER, CHARLES R.
		Examiner	**Art Unit**	
		Phillip H. Nguyen	2194	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 November 2003*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *18 November 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some *   c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date *10132005,08302004*.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1.   This action is in response to the original filing of June 6, 2003. Claims 1-20 are

pending and have been considered below.

Oath/Declaration

2.   The oath or declaration is defective. A new oath or declaration in compliance

with 37 CFR 1.67(a) identifying this application by application number and filing date is

required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the city and either state or foreign country of residence of
each inventor. The residence information may be provided on either an
application data sheet or supplemental oath or declaration.

It does not identify the mailing address of each inventor. A mailing address is an
address at which an inventor customarily receives his or her mail and may be
either a home or business address. The mailing address should include the ZIP
Code designation. The mailing address may be provided in an application data
sheet or a supplemental oath or declaration. See 37 CFR 1.63(c) and 37 CFR
1.76.

It does not identify the citizenship of each inventor.

Specification

3.   The abstract of the disclosure is objected to because there are more than 150

words. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

4.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5.   Claim 1 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation "software is automatically installed...". The specification does not define the word "automatically". Therefore, it is unclear to the Examiner whether the "automatically" installation initiated by the compute unit or governed by the rule based and policy based initiation or how much "automatically" installation is with or without user interaction. Applicant is required to define what automatically means.

Claim Rejections - 35 USC § 102

6.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7.   Claim 1-13, 15, 17-20 are rejected under 35 U.S.C. 102(e) as being anticipated

by Becker (US 2003/0195921).

8.   Claim 1: Becker discloses a computer network comprising:

       a. A plurality of compute elements ([0036]; Fig. 1);

       b. A repository comprising compute element characteristics for each of the

plurality of compute elements ([0035]); and

       c. Software having at least one operating parameter, wherein the software is

automatically installed on a target compute element selected from the plurality of

computer elements, and wherein the target compute element is selected by comparing

the at least one operating parameter with the compute element characteristics ([0028];

[0037]).

       Claim 2: Becker discloses a computer network of claim 1 above; and further

discloses the plurality of compute elements comprises servers ([0039]; Fig. 2).

       Claim 3: Becker discloses the computer network of claim 2 above; and further

discloses the plurality of compute elements comprises server farm ([0039-0041]; Fig. 2).

       Claim 4: Becker discloses the computer network of claim 1 above; and further

discloses the compute element characteristics include processor characteristics,

memory characteristics, storage characteristics, peripheral characteristics, networking

characteristics, operating system characteristics, security characteristics, or service

level characteristics ([0035]).

Claim 5: Becker discloses the computer network of claim 1 above; and further

discloses at least one operating parameter includes processor requirements, memory

requirements, storage requirements, peripheral requirements, networking requirements,

operating system requirements, security requirements, timing requirements, software

availability requirements, or service level requirements ([0028]; [0032]; [0035]).

Claim 6: Becker discloses the computer network of claim 1 above; and further

discloses comparing of the at least one operating parameter with the compute element

characteristics comprises ranking the compute element suitability to host the software

based on a comparison of the at least one operating parameter with at least one of the

compute element characteristics for each of the compute elements (such as memory or

architecture) ([0007]).

Claim 7: Becker discloses the computer network of claim 1 above; and further

discloses control logic (Application Provisioning System) that receives the at least one

operating parameter and the compute element characteristics to perform said

comparing of the at least one operating parameter with the computer element

characteristics ([0036-0037]).

Claim 8: Becker discloses the computer network of claim 7 above; and further

discloses control logic (Application Provisioning System) identifies the target compute

element to install the software ([0036-0037]).

Claim 9: Becker discloses a computer network comprising:

a. A plurality of host computers, including a current computer subset and at least

one target computer ([0039-42]);

b. A repository (Environment Characteristics) comprising computer

characteristics for each of the plurality of host computers ([0035]); and

c. Software having at least one operating parameter, wherein the software has

been automatically reprovisioned from the current computer subset to the at least one

target computer in a reprovisioning event ([0028; 0030; 0036-0037]).

Claim 10: Becker discloses the computer network of claim 9 above; and further

discloses the plurality of host computers comprises servers ([0039]).

Claim 11: Becker discloses the computer network of claim 9 above; and further

discloses the plurality of host computers comprises a server farm (server clusters)

([0039-0041]; Fig. 2).

Claim 12: Becker discloses the computer network of claim 9 above; and further

discloses the computer characteristics include processor characteristics, memory

characteristics, storage characteristics, peripheral characteristics, networking

characteristics, operating characteristics, security characteristics or service level

characteristics ([0035]).

Claim 13: Becker discloses the computer network of claim 9 above; and further

discloses the at least one operating parameter includes processor requirements,

memory requirements, storage requirements, peripheral requirements, networking

requirements, operating system requirements, security requirements, timing

requirements, software availability requirements, or service level requirements ([0035]).

Claim 15: Becker discloses the computer network of claim 9 above; and further

discloses comparing of the at least one operating parameter with the computer

characteristics comprises ranking the host computers suitability to host the software

based on a comparison of the at least one operating parameter with at least one of the

computer characteristics for each of the host computer (such as memory or

architecture) ([0007]).

Claim 17: Becker discloses the computer network as in claim 9 above; and

further discloses control host logic (Application Provisioning System) that receives the at

least one operating parameter and the computer characteristics to perform said

comparing of the at least one operating parameter with computer characteristics or the

key performance indicator ([0036-0037]).

Claim 18: Becker discloses the computer network as in claim 17 above; and further discloses control logic (Application Provisioning System) identifies the target computer to install the software ([0036-0037]).

Claim 19: Becker discloses the computer network as in claim 9 above; and further discloses current computer subset comprises one or more of the plurality of host computers (Fig. 2)

Claim 20: Becker discloses a computer network comprising:

a. A plurality of host computers, including a first computer and at least one target computer ([0036]; Fig. 1, item 110);

b. A repository comprising computer characteristics for each of the plurality of host computers ([0035]; Fig. 1, item 115);

c. Software having at least one operating parameter, wherein the software is automatically installed on the first computer selected from the plurality of host computer, and wherein the first computer is selected by comparing the at least one operating parameter with the computer characteristics ([0028; 0037]); and

d. Software is automatically reprovisioned from the first computer to the at least one target computer in a reprovisioning event, wherein the reprovisioning event includes comparing the at least one operating parameter with the computer characteristics or a key performance indicator ([0030; 0036-0037]).

Claim Rejections - 35 USC § 103

9.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10.   Claim 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Becker et al (US 2003/0195921).

Claim 14: Becker discloses the computer network of claim 9 above, but does not

explicitly disclose the key performance indicator includes annual downtime, average

response time, or operating cost rate. However, these are the normal key performance

indicators that are used to track the performance by network administrator. Therefore, it

would be obvious to use these key performance indicators to perform software

reprovision. One would use these key performance indicators to select the best

compute element to reprovision the software.

Claim 16: Becker discloses the computer network of claim 9 above, but does not

explicitly disclose the comparing of the at least one operating parameter with the key

performance indicator comprises automatically reprovisioning the software when the

key performance indicator falls below a minimum level for the key performance indicator

that is set by the operating parameter. However, Becker discloses Environment

characteristics include network connectivity, processors. These are also the normal key

performance indicators that are used to track the performance by network administrator.

Therefore, it would be obvious to also use these key performance indicators to check for

the performance level for reprovision purpose. One would use these key performance

(network connectivity, processor) indicators to compare the performance level to

reprovision the software.

Conclusion

11.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

a.   Suorsa (US 2002/0156831 A1) discloses a method for automated provisioning of

computer networks.

b.   Miller (US 2004/0261070 A1) discloses a method and program product for

autonomic software version management system.

c.   Kroening (US 6,922,831) discloses a method and system for providing software

utilizing a restore medium and a network.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Phillip H. Nguyen whose telephone number is (571)

270-1070. The examiner can normally be reached on Monday - Friday 10:00 AM - 3:00

PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, James Myhre can be reached on (571) 270-1065. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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published applications may be obtained from either Private PAIR or Public PAIR.

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PN
6/8/2006

James W. Myhre
Supervisory Primary Examiner